

SENATE BILL 789  
By Burchett

AN ACT to amend Tennessee Code Annotated, Title 41,  
Chapter 22, relative to work programs for inmates.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 41, Chapter 22, is amended by adding Sections 2 through 7 of this act as new Part 5.

SECTION 2. The commissioner of correction, with the approval of the governor, is hereby authorized to contract with county mayors or the chief executive officers of municipalities for the use of any or all inmates, except those for which it is undesirable or impractical, in the opinion of such officials, to work outside the walls of any prison in this state to assist in the removal of graffiti.

SECTION 3.

(a) Any county or municipality using inmates for graffiti removal shall pay the commissioner of correction for the use of such inmates pursuant to this part. The commissioner of correction shall, except as otherwise provided, pay such moneys so received into the state treasury, where they shall be credited to the department of correction.

(b) Such rate of pay shall not exceed the department of correction expenditures necessary to enable such inmates to perform the contracted labor while ensuring adequate security, plus an additional amount to be determined by the commissioner of correction for the purpose of funding Section 4 of this part.

SECTION 4. The additional amount prescribed in Section 3 of this part shall be kept and reserved in a special fund for the use and benefit of the inmates so employed. Such fund shall be reserved by the commissioner of correction, and with the approval of the governor, to be

sued in making payments to deserving inmates or their dependents on a fair and proportionate basis.

SECTION 5. The commissioner of correction is hereby authorized to pay all necessary transportation of inmates, guards and equipment out of the department's budget.

SECTION 6.

(a) For the purpose of promoting the public safety, health, welfare, convenience and enjoyment, to protect the public investment in public property, and to preserve and enhance the scenic beauty of property, the general assembly hereby finds and declares that graffiti constitutes a public nuisance which may be abated in accordance with the provisions of this part.

(b) As used in this section, unless the context otherwise requires:

(1) "Advertising" means any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner or tenant of the property, or an agent of such owner or tenant, for the purpose of promoting products or services or conveying information to the public;

(2) "Graffiti" means, without limitation, any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind visible to the public that is drawn, painted, chiseled, scratched or etched on a rock, tree, wall, bridge, fence, gate, building or other structure; provided, this definition does not include advertising or any other letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner of the property, a tenant of the property, by an authorized agent for such owner or tenant, or unless otherwise approved by the owner or tenant;

(3) "Municipality," includes incorporated cities and towns and metropolitan governments;

(4) "Publicly-owned property" means the property owned or controlled by a federal, state or local governmental entity, including, but not limited to, public parks, streets, roads and sidewalks; and

(5) "Tenant" means any person shown by the records of the register of deed's office as a lessee of property, or any person lawfully in actual physical possession of property.

(c) Any county or municipality may use county or municipal funds to remove graffiti or other inscribed material from publicly-owned real or personal property or privately-owned real or personal property visible from publicly-owned property and located within the county or municipality and to replace or repair publicly-owned property or privately-owned property visible from publicly-owned property within that municipality that has been defaced with graffiti or other inscribed material.

(d) The county or municipality is authorized to remove the graffiti or other inscribed material, or, if the graffiti or other inscribed material cannot be removed cost-effectively, to repair or replace that portion of the property that was defaced, but not to paint, repair, or replace other parts of the property that were not defaced by graffiti

(e)

(1) The removal, repair, or replacement may be performed, in the case of publicly-owned real or personal property, only after securing the consent of the public entity having jurisdiction over the property.

(2) In the case of privately-owned real or personal property visible from publicly owned property, the removal, repair, or replacement may be performed after the property owner and the tenant, if any, give their written consent to the municipality authorizing removal of the graffiti.

(f) Removal of graffiti by a county or municipality pursuant to the provisions of this part shall be performed at the sole expense of the county or municipality. In removing the graffiti, the county or municipality shall coordinate with the department of correction to restore the property as nearly as possible to the condition as it existed immediately prior to the graffiti being placed on the property. Nothing in this section shall be construed to impair or limit the power of a county or municipality to define and declare nuisances and to cause their removal or abatement under any procedure now provided by law for the abatement of any public nuisances.

(h) A county or municipality and its officers shall not be liable for any damages or loss of property due to:

(1) The removal of graffiti performed pursuant to the provisions of this section;

(2) The repair or replacement of the property performed pursuant to the provisions of this section; or

(3) The failure by a county or municipality to remove, repair or replace property defaced by graffiti pursuant to the provisions of this section.

SECTION 7. The general assembly recognizes that the sooner graffiti is removed the less likely property will suffer additional defacement. The general assembly hereby encourages the expeditious reporting and removal of all graffiti. The commissioner of correction is hereby directed to provide resources to counties and municipalities to ensure a rapid response to the defacement of property by graffiti.

SECTION 8. This act shall take effect July 1, 2005, the public welfare requiring it.